

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs

Case No: 07-20309
Honorable Victoria A. Roberts

CORDELL SAIN,

Defendant.

**ORDER DENYING REQUEST FOR LEAVE TO FILE
MOTION (2255) DUE TO EXCUSABLE NEGLIGENCE**

Defendant filed the above entitled motion. Defendant admits that by statute, he had one year after his conviction became final, to file a motion seeking relief under 28 U.S.C. § 2255. For Mr. Sain, that one year period began to run when his time expired to file a petition for certiorari to the United State Supreme Court. Mr. Sain's sentencing and appeal were affirmed by the Sixth Circuit on May 24, 2011. He had until August 22, 2011 to file his certiorari petition. This is the date his judgment of conviction became final, so he had until August 22, 2012 to file his §2255 motion.

This motion now before the Court - requesting more time to file a §2255 motion - was filed on September 10, 2012. Mr. Sain argues as his excusable neglect that he had respiratory infections in April and May of this year that affected his health and prevented him from completing his motion.

The Court does not find this persuasive, inasmuch as Mr. Sain claims his health challenges did not begin until eight months into his year within which to file his §2255 motion.

The Court takes guidance from FRCP 60(b)(1), which allows a Court to relieve a party from final judgment, order or proceeding. FRCP 60(b)(1). But, such a request based on excusable neglect must be filed no more than a year after entry of the judgment or order, or date of the proceeding. FRCP 60(c)(1).

Based on this rule, Mr. Sain's motion for more time based on excusable neglect should have been filed not later than August 22, 2012. He didn't do that.

Even if the Court considered this motion on its merits, it would not be granted. Mr. Sain is vague and conclusory in his representation that a two month long respiratory condition prevented him from filing his §2255 motion. *U.S. v Reyes*, 307 F3d 451, 456 (6th Cir. 2002). (Counsel failed to explain the nature or duration of the care his client had to give his terminally ill mother in a nursing home.)

Defendant is time barred from filing this motion, and fails to show excusable neglect even if the motion was not time-barred.

The motion is **DENIED**.

IT IS ORDERED.

/s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: October 15, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record and Corell Sain by electronic means or U.S. Mail on October 15, 2012.

s/Linda Vertriest
Deputy Clerk